Proceeding: IMPLEMENTATION OF SECTION 255 OF THE TELECOMMUNICATIONS AC Record 1 of 1

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Before the Federal Communications Commission
Washington, D.C. 20554

In the Matter of:	)
	)
Implementation of Section 255 of the Telecommunications Act of 1996	)
	)
Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities	)

Comments of AirTouch Communications, Inc.

AirTouch Communications, Inc. ("AirTouch"), respectfully submits its comments in response to the Commission's recent Notice of Proposed Rulemaking in the above-referenced proceeding.[1] AirTouch is a Commercial Mobile Radio Service ("CMRS") provider with interests in cellular, paging, PCS and mobile satellite services, both domestic and international. Pursusuant to the Notice, these comments are also being filed electronically.[2]

INTRODUCTION AND SUMMARY

AirTouch views access for persons with disabilities as a competitive market issue: how to ensure that AirTouch can attract and keep customers from all walks of life. AirTouch describes herein how its processes ensure that its services can be accessed by customers with disabilities. AirTouch has also taken steps to ensure that its manufacturers and vendors take access for persons with disabilities into account when designing and producing products to be used by AirTouch's customers. Because accessibility most often involves the functionality of the equipment used in

[1] "Implementation of Section 255; Access to Telecommunications Services by Persons with Disabilities," WT Docket No. 96-198, Notice of Proposed Rulemaking, FCC 98-55 (released April 20, 1998)("Notice").

[2] Notice, para. 183-185

telecommunications services, it is these manufacturers who are best able to take steps to ensure accessibility.

For its services, AirTouch has found most success in ensuring access to persons with disabilities through very general guidelines, with appropriate responses to particular customer interests and concerns where necessary. AirTouch believes this case-by-case responsiveness is far more efficient and serves the Congressional mandate better than processes that attempt to anticipate each and every individual disability issue that might arise. This approach - relying on general principles, marketplace competition, and enforcement - should be adopted by the Commission in its rules.

Requiring manufacturers and carriers to anticipate each and every possible disability and build that into their systems would likely create enormous costs, excess capacity, yet achieve minimal benefits in the form of affordable, accessible equipment and services. In the same light, a detailed, prophylactic set of rules is likely to create more difficulties in application, enforcement, and costs to consumers than it solves. As the Notice explains, the Commission "must allow industry the flexibility to innovate and marshal its resources toward the end goal, rather than focusing on complying with detailed implementation rules."[3]

AirTouch believes that the mandate of Section 255 is simple and clear: manufacturers and service providers must ensure that those with disabilities can access their products and services, where "readily achievable."[4] AirTouch supports the Commission's interest in carrying this out in a "practical, common sense manner." In this light, many of the questions regarding definition of terms raised in the rulemaking can, and should be, answered in a straightforward manner by reference to the use of those terms elsewhere in the statute. For example, Congress used the term

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[3] Notice, para. 3.

[4] 47 U.S.C. § 255; see also 47 U.S.C. § 251(a) (telecommunications carriers may not install network features, functions, or capabilities that do not comply with the guidelines established under Section 255).

"telecommunications service" in Section 255 and defined that term in Section 3(43) and 3(46) of the Act. No further elaboration is necessary; consideration of whether Congress "really" intended other services, e.g., information services, to be covered is unnecessary, inappropriate, and presumably unlawful.

DISCUSSION

I. AirTouch Values Accessibility for Persons With Disabilities

As the Notice observes, there are at least 54 million Americans with some form of disability.[5] In a competitive market, this is simply too big a customer segment for a successful business to ignore. Independently of the Congressional mandate, AirTouch has long found it beneficial to ensure that this market segment finds AirTouch products and services not only accessible, but a good value for their money. AirTouch has found that mobile phones and pagers are useful tools to all Americans, particularly including those with disabilities. Mobile phones are an extremely useful way for those individuals who are visually impaired to get information; vibrating pagers and new types of "cellular" phones can get a text-message to those with hearing impairments; both mobile phones and pagers permit those who are mobility impaired to have a portable communications device that is easily accessible.

Bearing this in mind, AirTouch has worked with its vendors to ensure that the equipment it supplies its customers meets the expectations of this important customer segment. Many of the items do provide accessibility to consumers with disabilities; additionally, the specifications generally accommodate persons who use hearing aids but who may not meet the statutory definition of "disabled." For example, cellular handsets sold with AirTouch services make available the following features: optional hands-free kit; handstrap; ringer volume adjust; ear piece volume adjustment; vibrate alert (at least for future handset purchases); silent alert (visual alert via blinking LED); adjustable DTMF tone length, and an "assistive device connection."[6] All handset keys must provide

[5] Notice, para. 1.

[6] AirTouch specifications provide that digital handsets provide a handsfree headset connection to be utilized as an Auxiliary Audio Jack. This provides accessibility for those with speech and hearing disabilities which

both tactile and audio feedback of their operation, and must be physically oriented as in a standard telephone. Alert functions, e.g., low battery, must be performed both audibly and visually. Manufacturers who sell to AirTouch Paging are asked to ensure that its equipment has available the option for (a) vibrate alert, (b) tone adjust (type and volume), (c) silent alert, (d) large screen for easy reading (in at least one model), (e) clips and lanyards, and (f) backlighting.

AirTouch requires manufacturers to meet particular specifications to ensure that AirTouch services are accessible to the hearing-impaired. Handsets must support the use of hearing aids and devices without causing feedback or discomfort to the user, i.e., they must be "hearing aid neutral." Digital handsets must be hearing aid compatible as defined under the CDG "Hearing Aid Compatibility Mode Stage 1 Feature Description, Version 0.03 dated August 2, 1996." This feature allows a CDMA handset to transmit only full rate frames when the transmit power level exceeds a given threshold, thus mitigating interference with hearing aid devices. Through these vendor specifications, AirTouch is able to market its services to persons with disabilities, and make available modifications to accommodate specialized needs.

II. Definitional Questions Are Largely Answered by Statute or Prior Decisions

The Notice tentatively concludes that to the extent various phrases used in Section 255, such as "telecommunications carrier," or "network features, functions, or capabilities," are broadly grounded in the Communications Act, they require no further definition.[7] AirTouch agrees. Some remaining questions concern terms such as "telecommunications equipment," and "customer premises equipment," but these terms are "established terms whose definitions are fixed by the Act and long usage, and thus do not require further interpretation in this proceeding."[8] Other terms, such as "disability,"

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require a means for connecting external equipment such as assistive listening devices and/or Text Telephone Devices (TTY/TDD's). Further enhancements to accessibility are planned.

[7]Notice, para. 35.

[8]Id., para. 48.

and "readily achievable," are defined elsewhere in the U.S. Code.[9] There is a substantial body of judicial decisions interpreting and applying these terms; duplication of that effort by the Commission is unnecessary.

Bundled packages of services and equipment, equipment consisting of multiple components, and the use of adjunct or support services in conjunction with telecommunications services or equipment present no novel difficulties in applying these definitional standards, provided the Commission is faithful to the statutory terms. A bundled package of services and equipment should, of course, meet the statutory standards of accessibility, since any individual element should also meet the statutory standard to the extent it is a telecommunications service, telecommunications equipment, or customer premises equipment (CPE).

AirTouch agrees that the Access Board's definition of a "manufacturer" as the "final assembler" could be adopted, provided that any such definition preserves the statutory distinctions between "telecommunications carrier" and "manufacturer."[10] Congress deliberately created separate sections to delineate two distinct responsibilities: manufacture of accessible equipment and provision of accessible services. Although AirTouch may sell CPE as part of its service package, and may even identify such CPE with its own brand name, AirTouch and other telecommunications carriers do not "design, develop, or fabricate" telecommunications equipment.[11] AirTouch equipment specifications (as noted above) are intended to ensure that AirTouch services are accessible, pursuant to 47 U.S.C. § 255(c). The Commission's rules must not confuse matters such that carriers become directly responsible for the design or manufacture of accessible equipment under Section 255(b).

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[9]See 42 U.S.C. §§ 12102(a)(2) (definition of "disability"); 12181(9) (definition of "readily achievable"); see also Notice at para 68; Id., para. 94 (reciting statutory definitions).

[10]See Notice, para. 59-60.

[11]See 47 U.S.C. § 255(b).

To the extent that a service package includes non-telecommunications services, such as enhanced services, information services,[12] or billing services,[13] these elements are not "telecommunications services," and therefore are not covered by the requirements of Section 255. To the extent that service providers have competitive incentives to meet the needs of disabled customers, they will have strong marketplace incentives to make such information services, billing, or other services more accessible. AirTouch, for example, provides service information and customer support information in Braille upon request.

III. The Commission Should Encourage Access, Not Litigation

AirTouch agrees with the Commission's interpretation that the statute provides for exclusive Commission authority over any complaints brought under this section.[14] AirTouch also strongly believes that the competitive market will play a significant role in ensuring that the accessibility standards of Section 255 and 251(a) are met. To the extent that customers have an inquiry or complaint regarding accessibility, their first stop should be the carrier concerned, not the Commission. Many accessibility issues - particularly those of a specialized nature - can and will be addressed by the carriers should they arise. Carriers take the statutory mandate seriously and are committed to ensuring access to persons with disabilities. The Commission should make it easier, not more difficult, for carriers to devote resources to accessibility. To this end, the Commission should revise many of its proposals that will encourage complaints and burden the industry and the Commission alike with excessive litigation.

AirTouch recognizes that some accessibility issues may be best resolved by use of the Commission's dispute resolution and/or complaint processes. Some novel measures may also be necessary, for example, to permit joinder of manufacturers as a party to the

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[12]See Notice, para. 42 (seeking comment on whether Congress intended Section 255 to apply to "information services" which fall outside the scope [and plain terms] of Section 255).

[13]See Notice, para. 75 (proposing to evaluate whether a telecommunications service is "accessible" in part by evaluating whether non-telecommunications "support services" are accessible).

[14]47 U.S.C. § 255(f); Notice, para. 9.

proceeding.[15] But the Commission should not actively encourage parties to resort to litigation in the first instance; and should not create artificial incentives that encourage use (or abuse) of the complaint process.

Accordingly, the Commission should do more than "encourage potential complainants to contact the manufacturer or service provider to attempt to resolve the problem before lodging a complaint."[16] This contact - and some statement that such contact failed to resolve the problem - should be a preliminary requirement of any complaint. This would avoid involving the Commission's scarce resources where accessibility concerns can be addressed by the carrier, or where they result from a misunderstanding. There is no reason that the first time a manufacturer or carrier hears about an accessibility issue it should be from the Commission, rather than the consumer involved. Direct resolution by the carrier or manufacturer, moreover, is by far the most preferable outcome.

Certain proposals in the Notice seem designed to encourage various parties to resort to litigation and should not be adopted. For example, the Commission's proposals not to impose a standing requirement, to provide for no statute of limitations,[17] and to require no filing fee (or to waive the statutorily required fee),[18] should not be necessary to resolve a non-frivolous complaint. A genuinely aggrieved individual who cannot obtain, or believes they cannot obtain, access to telecommunications equipment or services, and wants prompt resolution of their concerns, should be able to meet the standing and time limit requirements without difficulty. Issues of more general concern, of course, can be resolved by a rulemaking proceeding.

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[15] See Notice, para. 154.

[16] Notice, para. 126.

[17] Notice, para. 148-149

[18] Notice, para. 155.

Moreover, most judicial fora - including complaints against common carriers under Section 208 - require the filing of some fee to support the administrative costs created by the filing of the complaint. Inclusion of a filing fee also helps discourage frivolous litigation. The Commission should require a nominal filing fee for formal complaints or Section 208 complaints, and only waive it in documented cases of indigency.[19]

That said, once a complaint matter is to be handled by the Commission, AirTouch agrees that the Commission should assist complainants in resolving their complaints informally, in part by providing a central Commission contact point for Section 255 inquiries and complaints.[20] The Commission should forward copies of any complaints received to the carrier. Complaints should be forwarded as submitted, but with a translation if the document is not submitted in standard type-written English.

"Fast-track" procedures, while noble in intent, may be unwieldy in practice. If a matter can be addressed based on information that can be gathered in five business days, it is most likely a matter that a consumer and carrier can resolve on their own. Matters that rise to the level at which resort to the Commission is needed are, in contrast, not likely matters in which all relevant information can be gathered in such a short time frame. Moreover, where five business days is not sufficient, preliminary and incomplete responses serve no one's interest and may serve to create side issues not relevant to a real solution. Given the highly competitive CMRS market, if a carrier can gather the relevant information, identify possible solutions and/or begin to work with the complainant in five business days, they already have ample incentives to do so. Standard informal complaint procedures should be sufficient to address matters promptly and efficiently.[21]

CONCLUSION

[19] AirTouch is not suggesting that the Commission add a new fee requirement to the informal complaint process, see 47 C.F.R. § 1.716.

[20] Id., para. 128, citing "TAAC Report," §§ 6.7.4.1, 6.7.4.2, at 32; Id., para. 130; Id., para. 148.

AirTouch is committed to continuing to meet the needs of its customers with disabilities, and to ensure that its services are accessible and usable by those individuals. The Commission should implement Section 255 in a way that acknowledges this level of commitment and is faithful to the statutory language.

Respectfully submitted,

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[21] Notice, para. 137.